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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 362

FONTAINE LE MAISTRE,

Petitioner,

vs.

HERMAN LEFFERS, ET AL.,

Respondents

BRIEF OF RESPONDENT REAL ESTATE EXCHANGE, INC. ON PETITION FOR WRIT OF CERTIORARI

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Petitioner has filed Petition for issuance of Writ of Certiorari to the Supreme Court of the State of Florida to review the decision and judgment of said Court in this cause. This Brief on behalf of Real Estate Exchange, Inc., a corporation, one of the Respondents, is filed in opposition to the said Petition.

Statement of Case

Petitioner owned certain wild, unoccupied and unimproved lands in Lee County, Florida (Tr. 2-5). He did not pay taxes levied by the State of Florida and County of Lee for 1939. These taxes became delinquent on April 1st of the following year. The procedure in Florida for

enforced collection of taxes is prescribed by Sections 193 and 194, Florida Statutes, 1941, and condensed, is as follows:

Sec. 193.51. On or before June 1st of each year the County Tax Collector publishes notice of lands on which taxes are unpaid, giving amount due and fixing time for public sale.

Sec. 193.54. On the day designated the Collector strikes off the land to any bidder who offers "to pay the taxes, interest, costs, and charges thereon." If there are no bidders "each parcel shall be bid off by the tax collector for the County."

Sec. 193.59. The Tax Collector gives to the purchaser a certificate evidencing the payment, which certificate constitutes a lien on the land.

Sec. 194.02. The owner of the lands may redeem the same at any time after issuance of the certificate and before a tax deed is issued.

Sec. 194.15: After the lapse of two years from date of the certificate the holder of the certificate may apply for a tax deed. Due notice is given (194.16); the lands are sold at public auction to the highest bidder (194.21) and upon sale a statutory form of tax deed is issued.

Sec. 194.53, Upon issuance of a tax deed all right, title, interest in or liens upon the property, except liens for general taxes, of equal dignity with county taxes, are cut off and forever declared null and void.

In accordance with the foregoing provisions, on August 5, 1940, the Tax Collector of Lee County, Florida, issued Tax Certificate No. 40 describing Petitioner's lands (Tr. 2). The lands were not redeemed by payment of the amounts due, and on January 20, 1943, Application was made for issuance of tax deed and such deed was issued on March 1, 1943 (Tr. 3).

On August 18, 1942, Petitioner was inducted into the military service (Tr. 2). He was discharged December

18, 1945, and thereafter on March 25, 1946, filed suit in equity in the Circuit Court for Lee County, Florida, seeking to set aside the tax deed, claiming relief under the provisions of Section 205, Soldiers' and Sailors' Civil Relief Act, as amended October 6, 1942, as appears from the third paragraph of Petitioner's Bill of Complaint, to-wit (Tr. 2):

> "3. That by reason of the existence of said military service of the said plaintiff, as aforesaid, the provisions of the amendment of the preceding act applied to him from the date when the same became effective, to wit: the 6th day of October, 1942, and *were self-executing and gave an automatic extension* of time for the redemption of any taxes or tax certificates which were then outstanding or delinquent under the laws of the State of Florida against lands of this plaintiff."

Section 205 is as follows (Sec. 525, Title 50, U. S. C. A.):

> "The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs, after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (October 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

Motion was filed by Respondent to Dismiss the Bill of Complaint (Tr. 31), the Motion being grounded on the proposition that Section 205 afforded no relief under the

allegations of the Bill. Upon argument of the Motion, the lower court was of the opinion that the Bill of Complaint did not state a case for relief and entered Order dismissing the Bill (Tr. 32). Petitioner took appeal to the Supreme Court of Florida and that Court upheld the lower court on the theory that the allegations of the Bill of Complaint failed to bring Petitioner within the terms of the Soldiers' and Sailors' Civil Relief Act (Tr. 45).

History of Section 205

This Section first appeared as Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1918, and read as follows:

> "The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators or assigns, whether such cause of action shall have accrued prior to or during the period of such service (Mar. 8, 1918, c. 20, #205, 40 Stat.)"

Several cases appear in the reports involving this Section. Under the laws of many States mortgages may be foreclosed without judicial proceedings, and after foreclosure a deed is issued, and the owner is given a specified time to come in and redeem. Persons who had been in the military service during the first war filed suit claiming that Section 205 tolled the running of the period of redemption and that they had the right to redeem, notwithstanding the statutory period had elapsed. Such contention reached this Court in the case of *Ebert* v. *Poston* (Mich.), 266 U. S. 548, 69 L. Ed. 435, and with reference thereto this Court held:

> "The statutory right to redeem from a sale by advertisement for foreclosure of a mortgage is not a right of action within the operation of Section 205 of the Soldiers' and Sailors' Civil Relief Act to the effect

that the period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of an action by or against any person in military service."

Other cases involving this Section are as follows:

Wood v. *Vogel* (Ala.), 204 Ala. 692, 87 Sou. 174;
Bell v. *Buffington* (Mass.), 244 Mass. 294, 137 N. E. 287;
Taylor v. *McGregor State Bank* (Minn.), 144 Minn. 249, 174 N. W. 893.

The Soldiers' and Sailors' Civil Relief Act of 1940 re-enacted Section 205 without changes. Thereafter in 1942 Congress took cognizance of the litigation involving this Section and the Act was amended on October 6, 1942, by adding the last clause thereof, reading as follows:

"Nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (October 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

The amendments were prepared by the House Committee on Military Affairs which made a report explaining the reasons for proposing the changes. With reference to Section 205 this report shows (Title 50, U. S. C. A. Soldiers' and Sailors' Civil Relief Act, Historical Data, page 108), as follows:

"The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax or assessment is likewise tolled during the part of such period which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. Although the tolling of such periods is now within the spirit of the law, it has not

been held to be within the letter thereof. I. R. 1269, C. B. June, 1922, P. 311; Ebert *v.* Poston, 45 Sup. Ct. 188, 266 U. S. 548, 69 L. Ed. 435."

In many of the States the procedure for sale of land for non-payment of taxes is similar to the foreclosure of a mortgage without judicial procedure. In those States having such procedure (and Florida does not have this method), lands are sold for non-payment of taxes and a deed is issued to the purchaser, but there is a right on the part of the land owner to redeem within a specific statutory period, usually one or two years. For statement of the methods of procedure in general use throughout the country, see 51 American Jurisprudence, 954.

Taking notice of the similarity in procedure in sale of lands for non-payment of taxes and in foreclosure of mortgages without judicial procedure, when amendments were prepared to Section 205 so as to extend the period of redemption so as to apply to mortgages, Congress likewise included "taxes or assessments." So far as we can find no case has arisen involving the foreclosure of taxes or assessments under this amendment.

This history of the amendment to Section 205 is given as it shows the intent of Congress in adopting the amendments.

Propositions Argued

1. Section 205 of Soldiers' and Sailors' Civil Relief Act is not applicable under the Florida procedure for forced collection of taxes on real estate, and said Section affords no relief to petitioner.

2. The Soldiers' and Sailors' Civil Relief Act does not unconditionally and automatically protect wild, unimproved lands owned by a person in military service from sale for non-payment of taxes.

3. The sale of petitioner's land was made on August 5, 1940, twenty-six months before enactment of the amendment of October 6, 1942, and the amendment should not be given retroactive effect so as to afford relief to petitioner.

ARGUMENT

First Proposition

Section 205 of Soldiers' and Sailors' Civil Relief Act Is Not Applicable under the Florida Procedure for Forced Collection of Taxes on Real Estate and Said Section Affords No Relief to the Petitioner.

As stated in 51 American Jurisprudence, page 954, the methods of forcing collection of taxes on real estate vary in the different States, but fall into two general classes as follows:

> First. "By one method, which prevails in many of the states, a deed is delivered to the purchaser within a few days after the sale and the title passes to him subject to defeasance by redemption during the statutory period; during that period the purchaser remains passive, and if the owner fails to exercise his right of redemption within the specified time, the title becomes absolute by force of the statute, without any further proceedings in Court or elsewhere to establish it."
>
> Second. "By the second method, which is now in force in many states, the purchaser's title is inchoate and he receives no deed until the period of redemption has expired, and before the expiration of the period he must give notice to the owner of the time when the right of redemption will expire and the amount which he must pay in order to redeem the property, and no deed is issued to the property and no title passes to him until this notice has been sent."

From the history of Section 205 which we have set out, *supra*, there can be no question but that the 1942 Amend-

ment was brought into existence to toll the time for redemption in those States having procedure whereby lands are sold and a deed is delivered to the purchaser and title vested in him, subject only to defeasance by redemption during a fixed period of one or two years.

The procedure in Florida is set out, *supra,* and is in line with the second method referred to in American Jurisprudence. Very clearly the Amendment was not designed to apply to procedure of this type and cannot be extended to cover petitioner's case.

In the case of *State ex. rel Seville Holding Co.* v. *Draughon, et al.,* 127 Fla. 528, 173 Sou. 353, 111 A. L. R. 234, the Supreme Court of Florida clearly states the effect of the issuance of a tax certificate in Florida:

> "A tax certificate is a contract between the state and the purchaser thereof who is granted by such certificate the benefit of the laws of the state in force at the time securing and defining his rights under it. At the time the particular tax certificate involved in this case was issued, such certificate consfituted an enforceable statutory lien upon the delinquent tax payer's property capable of being redeemed by him, upon certain specified conditions, and only on such specified conditions, as were at the time of the issuance of such tax certificate prescribed by the statutes, including section 1002, C. G. L., which governs application for redemption postponed until after advertisement for tax deed is begun. See Starks *v.* Sawyer, 56 Fla. 596, 47 So. 513 (3rd syllabus); Clark-Ray-Johnson Co. *v.* Williford, 62 Fla. 453, 56 So. 938 (5th syllabus).

Florida statutes use the word "sale" in connection with proceedings for the issuance of a certificate, but clearly there is no "sale" within the accepted meaning of that word. Lands can only be struck off for the amount of taxes, interest, penalty and costs. There is no public auction

with everyone bidding and the certificates being sold to the highest bidder, but (Sec. 193.56, Fla. St. 1941):

> "193.56—To whom land struck off: The land shall be struck off to the person who will pay the tax, interest, costs and charges and will demand the lowest rate of interest for the first year, not in excess of the maximum rate allowed by law."

The only effect of the "sale" is to transfer the lien of the State and County to the individual who purchases the certificate, thus enabling the State and County to raise tax money for maintenance of public functions. This lien continues as a prior claim against the land until redeemed by the owner, or until the holder of the certificate files the certificate with the Clerk of the Circuit Court and applies for a tax deed, whereupon notice is given to the owner and the opportunity to redeem is allowed until there is a sale of the land. When sale is made, it is at public auction, to the highest and best bidder, with everyone having the right to bid. When deed is issued, there is no period of redemption. If the land brings more than the amount due for taxes, as is quite often the situation, the surplus is paid to the owner as provided by Sec. 194.22, Fla. Sts. 1941:

> "After all liens for general taxes and special assessments of the municipality and other taxing districts upon said property are paid in full, the balance of the purchase price shall be retained by the clerk and notice mailed to the owner of such lands * * * that this sum will be paid to him upon demand."

Under the Florida procedure there is no "sale or forfeiture" within the contemplation of Section 205, until the public sale pursuant to application for tax deed. When such sale is made and tax deed is issued, there is no period

of redemption, as Section 194.53, Fla. St. 1941, expressly provides:

> "194.53—All rights terminated upon issuance of tax deed. Upon issuance of a tax deed to any property under the provisions of this chapter, all right, title, interest in or liens upon said property, except liens for general taxes of equal dignity, with county taxes, shall be cut off and forever declared null and void."

We think our discussion of the Florida procedure demonstrates that the 1942 Amendment of Section 205 cannot be effective in Florida. However, if a mere reading of the statutes is not conclusive on this point, an examination of the facts shown by the pleadings in this case will certainly remove any doubt of the applicability of the amendment in Florida.

The certificate involved in this case was issued August 5, 1940. On August 5, 1942, the holder of the certificate could have applied for tax deed. This was prior to Petitioner being inducted into the military service. The Amendment to Section 205 was enacted October 6, 1942, twenty-six months after issuance of the certificate, and two months after the lapse of time within which tax deed could have been applied for. So it is, the statutory period had elapsed and the rights of the holder of the certificate had fully matured before entry of the Petitioner into the military service, and before enactment of the Amendment under which he claims relief.

It is true that Petitioner under the Florida law had the right to redeem his land any time before the actual issuance of the tax deed. But, this fact does not help Petitioner. The provision of Section 205 is that the period of military service will not be included in

> "computing any period now or hereafter provided by law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

The tax certificate holder had a statutory right on August 5, 1942 to apply for tax deed. So far as he was concerned the necessary time had elapsed, and his rights had fully matured. When the holder of the tax certificate made application for tax deed on January 20, 1943, even if the period of military service of Petitioner should not be included in computing the period within which the holder of the tax certificate was entitled to apply for a deed, two full years having elapsed since issuance of the certificate, the holder was entitled to apply and receive tax deed.

To conclusively show that the Section has no application to the Florida procedure, we need only *point out that Section 205 nowhere prohibits the issuance of a tax deed because the owner of the land is in the military service. The only prohibition is against including the period of military service in computing the period of redemption.* As above stated, under the facts here, without including the period of military service of Petitioner, the holder of the tax certificate on Petitioner's land was still under the Florida law entitled to apply for and to receive a tax deed.

We recognize that an act of this character must be liberally construed by the Court in order to effectuate the purpose of Congress. Bearing this in mind, with the available history of this Section and the evident intent of Congress in enacting the amendments of 1942, it would do violence to the amendment to extend it to cover the situation presented in this case.

The language of this Court in *Ebert* v. *Poston, supra,* dealing with construction of Section 205 in its original form, is most appropriate:

> "There is a further contention that the broad purpose of the act declared in Section 100 demands that it be liberally construed to include the situation presented in this case. Persuasive legislative reasons for distinguishing between the cases explicitly cared for by

> Sections 302, 205, and the present case, suggest themselves. We have no occasion to state them. The judicial function to be exercised in construing a statute is limited to ascertaining the intention of the legislature therein expressed. A casus omissus does not justify judicial legislation. Compare United States *v.* Weitzel, 246 U. S. 533, 543, 62 L. Ed. 872, 874, 38 Sup. Ct. Rep. 381."

In the case of *Oliver* v. *Oliver*, 244 Ala. 234, 12 So. 2d. 853, the Supreme Court of Alabama had before it the construction of Section 200 of the Soldiers' and Sailors' Civil Relief Act of 1940, and makes the following statement:

> "This statute was intended solely for the benefit of those in the armed services of the United States and is to be liberally construed to effectuate its purpose. Royster *v.* Lederle, 6 Cir. 128 F. 2d. 197. But this does not mean that the courts are to enter into the field of speculation and go beyond the plain import of the language of the statute. Bolz Cooperage Corp. *v.* Beardslee, 211 Mo. App. 109, 245 S. W. 611; Note, 130 A. L. R. 776."

In view of the facts in this case, whether Section 205 is strictly or liberally construed, we submit it cannot be extended to afford relief to Petitioner in this case where:

1. The relief intended by Congress under Section 205 is not applicable to the Florida procedure for forcing collection of unpaid taxes on real property;

2. Even if the amendment should be held applicable in Florida, and the period of military service of Petitioner be not included in computing the period within which the holder of the tax certificate is authorized to apply for a tax deed, under the facts in this case the holder of the certificate had a legal right to apply for and receive tax deed.

For the reasons set out, the decisions of the Circuit Court for Lee County, Florida, and the Supreme Court of the

State of Florida are correct and certiorari should not be granted in this case.

Second Proposition

The Soldiers' and Sailors' Civil Relief Act Does Not Unconditionally Protect Wild, Unimproved Lands Owned by a Person in the Military Service From Sale for Non-payment of Taxes.

The Circuit Court for Lee County, Florida, in sustaining Motion to Dismiss the suit filed by Petitioner, (Tr. 33), considered all the provisions of the Soldiers' and Sailors' Civil Relief Act and reached the conclusion that there was no intention on the part of Congress unconditionally to protect wild, unimproved lands owned by a person in military service from sale for non-payment of taxes. Upon appeal to the Supreme Court of the State of Florida, the Supreme Court upheld the lower Court on authority of *DeLoach* v. *Calihan*, decided March 21, 1947, by the Supreme Court of Florida, (Tr. 42). The Supreme Court of Florida in the latter case said:

> "In our view, Section 560, Soldiers' and Sailors' Civil Relief Act defines the standard by which a soldier or sailor may know the class of property on which he is granted indulgence thereunder, and Section 525 puts him on notice of the period of indulgence. As to real estate, the indulgence is limited to that 'owned and occupied for dwelling, professional, business or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.' "

The Soldiers' and Sailors' Civil Relief Act (Act October 17, 1940, C. 888, 54 Stat. 1178, 50 U. S. C. A. App. 113) now contains seven Articles, headed:

Article I. General Provisions
Article II. General Relief
Article III. Rent, Installment, Contracts, Mortgages
Article IV. Insurance
Article V. Taxes and Public Lands
Article VI. Administrative Remedies
Article VII. Further Relief

Section 203 appears under Article II "General Relief." As originally written, its sole purpose was to toll the running of the statute of limitations. The 1942 Amendment added the clause extending it to provide that the period of military service would not be included in computing the period of redemption of real property sold or forfeited to enforce taxes. The 1942 Amendments likewise added Article VII with the provisions contained therein providing additional relief to persons in the military service.

The question of taxes is dealt with exhaustively and carefully in Article V (50 U. S. C. A., App. Sec. 560). The types of property protected and the machinery used to effect such protection are contained therein.

Protection is given:

> "In respect to personal property, money or credits, or real property owned and occupied for dwelling, professional, business or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service, and still so occupied by his dependents or employees."

The sale of property so protected is prohibited except upon leave of Court granted upon application by the person whose duty it is to enforce collection of the tax. The Court to which application is made is authorized to stay proceedings for a period extending not more than six months after termination of military service. If the property is sold or forfeited to enforce collection of taxes or assessments, the

right to redeem or commence an action to redeem such property is given for the period of six months after termination of military service.

Should a person in the military service own property not of the type covered by Article V he is fully protected by Article VII giving "Further Relief." Under this Article (Section 590, Title 50 U. S. C. A.) a person may:

a. During the period of military service or six months thereafter,

b. Apply to Court for relief in respect of *any taxes or assessments* falling due prior to or during his period of military service; and

c. If the Court finds the ability of the applicant to pay his taxes has been materially affected by reason of military service, it may stay the enforcement during the period of time equal to the period of military service and provide for payments in installments.

The provisions of Article V and Article VII give full, adequate and complete protection to persons in the military service against loss of property for non-payment of taxes or assessments on any class of real property whether such taxes accrued prior to or during period of military service.

By the same token, under these sections, a person in the military service owning valuable rental property or large tracts of unoccupied lands used for grazing purposes, out of which rental property or grazing lands the person in the military service is receiving a large income, and is amply able to pay taxes and assessments, is not able merely by reason of being in the military service to avoid his just contributions to the maintenance of government.

This Court will take cognizance of the fact that thousands of young men and women entered the military service from every section of the country. A general right for an in-

definite period to redeem any and all lands sold for non-payment of taxes would make it impossible for the States, Counties, Municipalities and other taxing districts to find purchasers at tax sales and would effectively prohibit the collection of taxes on lands owned by persons in the military service or who might be subjected to such service. During the period from 1941 to the present time if the taxing districts of Florida had not been able to collect taxes or to sell for non-payment of taxes any and all lands or property owned by persons in the military service, there would have been a serious impairment of the financial structure of local government throughout the country. Certainly Congress had no such intention in mind in the passage of the Soldiers' and Sailors' Civil Relief Act.

Under Section 500 of the Act (Sec. 560, Title 50 U. S. C. A. App.) the Collector of Taxes makes application to sell property of the type covered by Section 500, if, in the opinion of the Court, the ability to pay of the person in military service is not materially affected by reason of such service, the Court is not authorized to stay proceedings. If the property is sold, the person in the military service must come in not later than six months after termination of service and apply for relief.

On the other hand, if the argument of Petitioner is sound and a person in the military service is unconditionally protected under Section 205 of the Act (Sec. 525, 50 U. S. C. A. App.) against the sale of ANY land for non-payment of taxes, his ability to pay is not taken into consideration, and he has an indefinite period, as long as two years in some states, after his discharge from the military service, within which to bring proceedings to set aside the sale.

In Section 500 of the Act Congress shows an intent to give absolute protection to a person in the military service against loss for non-payment of taxes of his home or business. By Section 700 of the Act (Sec. 590, Title 50 U. S.

C. A. App.) the person in the military service may apply for relief in respect to "any taxes or assessments" on property of any description, and if the situation warrants, the Court to whom application is made may stay enforcement of the tax. This gives the person in the military service all reasonable protection.

After very carefully working out Sections 500 and 700, certainly there was no intent on the part of Congress that Section 205, appearing earlier in the Act, would entirely abrogate Sections 500 and 700, and that under Section 205 a person in the military service owning the Willard Hotel, or other more valuable income producing real estate, could sit back, enjoy a large income, pay no taxes and be unconditionally protected.

Petitioner, with reference to Sections 205 and 500 says (Petition 16):

> "The two sections operate in distinct spheres, one extending the period of redemption for property already sold for taxes, and the other section preventing collection of unpaid taxes or assessments without leave of court first had and obtained by the officer seeking to enforce such collection."

This contention is not sound. A reading of the two sections plainly shows that Section 500 (3) covers the same ground as Section 205. This Section provides:

> "When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force."

Thus in Section 205, wholly an act of limitation, Petitioner contends Congress made provision for extending the period

allowed for redemption of *any and all* real property. Yet in Article V, headed "Taxes and Public Lands," where Congress carefully covered the subject of taxes, the same subject of redemption of land sold for non-payment of taxes is provided for, but limits the right of redemption to property occupied for "dwelling, professional, business, or agricultural purposes," and the owner is only allowed six months after termination of service to redeem, as against an indefinite period, possibly as long as two years after termination of service, under Section 205.

It is our view that Section 500 deals with taxes and shows the intent of Congress as to protection to be given to persons in military service, and under well recognized rules of construction, Congress must be presumed to have expressed its intention in Section 500, rather than in Section 205, where its attention was turned to other considerations.

For supporting authorities, see:

U. S. v. *Jackson*, C. C. A. 143 Fed. 783; 75 C. C. A. 41;
D. Ginsberg & Sons, Inc. v. *Popkin*, 285 U. S. 204; 52 S. Ct. 322; 76 L. Ed. 705.

In the *Jackson* case, the Circuit Court of Appeals for the Ninth Circuit, quoting from *Long* v. *Culp*, 14 Kan. 412, says:

> "It is also a rule of construction that, when one section of a statute treats specially and solely of a matter, that section prevails in reference to that matter over other sections in which only incidental reference is made thereto. Not because one section has more force as a legislative enactment than another, but because the legislative mind having been, in the one section, directed to this matter, must be presumed to have there expressed its intention thereon rather than in other sections where its attention was turned to other things." *Wellsburg* v. *Panhandle T. Co.* (W. Va.) 48 S. E. 746, 751.

In the *Ginsberg* case, this Court announces a like rule of construction, saying:

> "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. United States *v.* Chase, 135 U. S. 255, 260; 34 L. Ed. 117, 119, 10 S. Ct. 756; 8 Am. Crim. Rep. 649. Specific terms prevail over the general in the same or another statute which otherwise might be controlling."

A further rule of construction is applicable in this case. Section 500 appears later in the Relief Act than Section 205. If there is a conflict between the two Sections, then Section 500 is controlling. See the seventh headnote in the case of *Great Northern Ry. Co.* v. *U. S.*, C. C. A. 8th Circuit, 155 Fed. 945; 84 C. C. A. 93 affirmed 28 S. Ct. 313; 208 U. S. 452; 52 L. Ed. 567, as follows:

> "The intention of the legislature constitutes the law, and may be as effectually manifested by what is necessarily implied as by what is expressed, and where there are conflicting manifestations of the legislative rule, the last is controlling even though it rests in necessary implication."

When the whole Relief Act is examined it is certain:

1. That the amendment to Section 205 was added to extend the period of redemption in those States where a definite time is allowed after "sale or forfeiture" of real property within which to redeem;

2. That the amendment does not have a field of operation under the procedure in Florida.

3. That Congress attempted by Articles V and VII to provide complete protection to persons in military service against loss of their property for non-payment of taxes;

4. That the amendment to Section 205 must be so construed as to harmonize with provisions of Section 500 (3), and when so construed, there is no error in the decision of the Supreme Court of Florida denying relief to petitioner.

THIRD PROPOSITION

The Sale of Petitioner's Land Was Made on August 5, 1940, Twenty-six Months Before Enactment of the Amendment of October 6, 1942, and the Amendment Should Not Be Given Retroactive Effect so as to Afford Relief to Petitioner.

If there was a sale or forfeiture of Petitioner's land within the purview of Section 205, this occurred on August 5, 1940, when the certificate was issued. After the tax deed was issued on March 1, 1943, there was no period of redemption. The sale or forfeiture, therefore, occurred twenty-six months before the enactment of the Amendment of October 6, 1942.

The amendment is as follows:

> "nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 (October 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

Clearly any portion of military service arising prior to October 6, 1942, is excluded from any consideration.

"Any period now or hereafter provided by any law" can only refer to the statutory periods provided by existing or future laws of the several States permitting redemption of property.

In using the language "sold or forfeited" the amendment does not provide "now or hereafter sold or forfeited." It was very carefully drawn and unquestionably expressed the intent of Congress. No intent being shown that the amendment should apply to sales made long before the enactment, it cannot be given retroactive effect.

Ebert v. *Poston, supra*, involved a mortgage foreclosure in Michigan. The sale was made on February 5, 1918. The land owner had one year within which to redeem. Section 205 in its original form was passed March 8, 1918, Poston, who owned the land, enlisted in the army on September 29, 1918, and after his discharge filed suit, claiming the benefit of Section 205. This Court held:

> "Without resort to the common rule that statutes are ordinarily to be construed as prospective in operation (Shwab *v.* Doyle, 258 U. S. 529, 534, 66 L. Ed. 747, 752, 26 A. L. R. 1454, 42 Sup. Ct. Rep. 391) it is clear that Congress did not intend to deal with sales on foreclosure, made before the passage of the Act."

In the *Shwab* case (*Shwab* v. *Doyle*, 258 U. S. 529, 66 L. Ed. 747), cited in *Ebert* v. *Poston*, this Court had before it the construction of Estate Tax Act of 1916. Mrs. Dickel by deed dated April 21, 1915, assigned certain securities for benefit of Victor E. Shwab. Mrs. Dickel died September 16, 1916. Seven days before her death the Estate Tax Act of September 8, 1916, was passed, providing for taxes to be imposed upon the transfer of the net estate of every decedent dying after the passage of the act "to the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect" after his death, and any transfer of a material part of his property made within two years prior to death, without consideration shall, unless shown to the contrary, be deemed

to have been made in contemplation of death. The taxing authorities assumed that the act was applicable to the deed made by Mrs. Dickel and imposed taxes against the property. In construing the Act, this Court says:

> "The initial admonition is that laws are not to be considered as applying to cases which arose before their passage unless that intention be clearly declared. 1 Kent. Com. 455; Eidman *v.* Martinez, 184 U. S. 578, 46 L. Ed. 697, 22 Sup. Ct. Rep. 515; White *v.* United States, 191 U. S. 545, 48 L. Ed. 295, 24 Sup. Ct. Rep. 171; Gould *v.* Gould, 245 U. S. 151, 62 L. Ed. 211, 38 Sup. Ct. Rep. 53; Story, Const. Sec. 1398. The comment of Story is: 'Retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact.'
>
> There is absolute prohibition against them when their purpose is punitive; they then being denominated ex post facto laws. It is the sense of the situation that that which impels prohibition in such case exacts clearness of declaration when burdens are imposed upon completed and remote transactions, or consequences given to them of which there could have been no foresight or contemplation when they were designed and consummated."

In the light of these clear expressions of this Court, we submit that the amendment to Section 205 should not be given retroactive effect and apply to:

1. A sale made twenty-six months before enactment of the amendment;

2. A sale made before Petitioner entered the military service;

3. Situation where holder of the tax certified was entitled to apply for and receive a tax deed before amendment was enacted.

Conclusion

For the several reasons herein set out, we see no error in the decision of the Supreme Court of Florida and urge that Petitioner's application for Certiorari be denied.

Respectfully submitted,

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Attorneys for Real Estate Exchange, Inc.,
One of the Respondents.

SUPREME COURT OF THE UNITED STATES

No. 362.—October Term, 1947.

Fontaine Le Maistre, Petitioner, v. Herman Leffers et al. | On Writ of Certiorari to the Florida Supreme Court.

[February 2, 1948.]

Mr. Justice Douglas delivered the opinion of the Court.

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, as amended, 56 Stat. 769, 770, 50 U. S. C. App. Supp. V. § 525, provides in part that no portion of the period of military service [1] which occurs after October 6, 1942,[2] shall be included "in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment."

Petitioner owned land in Florida on which taxes became delinquent April 1, 1940. Under Florida statutory procedure [3] the tax collector after notice sells the land at public sale and issues a tax certificate to the purchaser. At any time after two years from the date of the certificate the holder thereof may apply for a tax deed. Notice is given, a public sale is had, and a tax deed is issued. The

[1] The term is defined in § 101 (2) of the Act as follows:

"For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act; for persons entering active service after the date of this Act, with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act ceases to be in force."

[2] That was the effective date of the amendment which added this provision to § 205.

[3] Fla. Stats. §§ 193–194 (1941).

owner may redeem the land at any time after issuance of the certificate and before issuance of the tax deed.

In accordance with this procedure a tax certificate on petitioner's lands was issued August 5, 1940. Petitioner was on active duty in the Navy from August 18, 1942, until his discharge on December 18, 1945. Application for a tax deed was made by one Conrod in January, 1943, and the deed issued to him on March 1, 1943. It is through him that respondents claim by mesne conveyances.

Petitioner filed this suit in equity on March 25, 1946, seeking to set aside the tax deed by reason of § 205 of the Soldiers' and Sailors' Civil Relief Act. The Florida Supreme Court affirmed a judgment denying the relief, — Fla. —, 31 So. 2d 155, on the authority of its earlier decision in *De Loach* v. *Calihan*, — Fla. —, 30 So. 2d 910. The case is here on a petition for a writ of certiorari which we granted because the construction given to the federal Act seemed to us not only a dubious one but also at variance with *Illinois Nat. Bank* v. *Gwinn*, 390 Ill. 345, 61 N. E. 2d 249.

Under Florida law petitioner concededly could have redeemed any time between August 5, 1940, when the certificate was issued, and March 1, 1943, when the tax deed was issued. The provision of the federal Act with which we are here concerned became effective during that period—October 6, 1942. At that time petitioner was in the Navy and at once became a beneficiary of it. That means that the running of the time granted him under Florida law to redeem was tolled as long as he was in the military service. Since he would have had from October 6, 1942, to March 1, 1943, to redeem, the effect of the Act was to give him the same length of time after his discharge for that purpose. His present action being timely, there is thus no barrier to his recovery so far as the Act is concerned.

Two reasons, however, are advanced against it. First, it is argued that § 205 applies only where state law provides for transfer of title to the purchaser subject to defeasance by redemption. The Florida procedure is said to be not covered by § 205 since title passes only on issuance of the deed, which ends the period of redemption. We do not think § 205 deserves such a technical reading. The provision in question was added in 1942 to remedy what this Court had held to be a *casus omissus* in a preceding Act.[4] *Ebert* v. *Poston*, 266 U. S. 548, 554. Its language does not compel the narrow reading that is suggested; and the spirit of the amendment repels any such restriction. It covers "any period . . . provided by any law for the redemption of real property sold or forfeited," etc. We see neither in that language nor in the legislative history of the provision any purpose to restrict its application to cases where redemption follows passage of title.

The second reason urged against petitioner is the one adopted by the Supreme Court of Florida in *De Loach* v. *Calihan*, *supra*. It held that § 205 is limited by § 500. The latter section gives added protection to a person in military service by providing that no sale for taxes or assessments shall be made except upon leave of court "in respect of . . . real property owned and occupied for dwelling, professional, business, or agricultural purposes,"

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[4] The purpose was stated as follows: "The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax, or assessment is likewise tolled during the part of such period which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. Although the tolling of such periods is now within the spirit of the law, it has not been held to be within the letter thereof (I. R. 1269 C. B., June 1922, p. 311; *Ebert* v. *Poston*, 266 U. S. 549)." Sen. Rep. No. 1558, 77th Cong., 2d Sess., p. 4.

and by granting a given period for redemption.[5] The Supreme Court of Florida held that § 500 describes the class of real property on which a soldier or sailor is granted indulgence, while § 205 indicates the period of the indulgence. Under that view petitioner would fail because the property in question does not appear to be land "owned and occupied for dwelling, professional, business, or agricultural purposes."

We do not, however, read the Act so restrictively. The two sections—205 and 500—supplement each other. Section 500, applicable to restricted types of real prop-

[5] Section 500 reads in part:

"(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

"(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person."

"(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption."

erty, gives greater protection than § 205. It restrains the sale for taxes or assessments of specified types of real property except upon leave of court and prescribes for them a specified time within which the right to redeem may be exercised if the property is sold. Section 205 extends in terms to all land and only tolls the time for redemption for the period of military service. The other construction attributes to Congress a purpose to protect only certain classes of real property owned by those in the armed services. We cannot do that without drastically contracting the language of § 205 and closing our eyes to its beneficent purpose. But as we indicated on another occasion, the Act must be read with an eye friendly to those who dropped their affairs to answer their country's call. *Boone* v. *Lightner*, 319 U. S. 561, 575.

Reversed.